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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-seventh session

SUMMARY RECORD OF THE 1402nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 1 August 2000, at 10 a.m.

Chairman: Mr. SHERIFIS

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GE.00-43637 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Thirteenth and fourteenth periodic reports of Mauritius (continued) (CERD/C/362/Add.2; HRI/CORE/1/Add.60/Rev.1)

1. At the invitation of the Chairman, the members of the delegation of Mauritius resumed their places at the Committee table.

2. Mr. SHAHI asked for clarification of the statement by the Judicial Committee of the Privy Council cited at the end of paragraph 11 of the periodic report. Was it intended to derogate in any manner from the State's obligation to ensure full implementation of the international covenants and conventions which it had ratified?

3. The exemption of personal laws from the provisions of section 16 of the Constitution appeared to be a vestige of British colonial rule, as similar provisions had existed in colonial India, where personal laws governing marriage, divorce, inheritance and succession had long been considered sacrosanct and had been upheld by the Privy Council. Attempts to change such laws, even in modern times, had resulted in serious social upheaval. In the case of Mauritius, did the exemption apply only to the Muslim community, or to other religious communities as well?

4. Mr. BOOLELL (Mauritius), replying to the Committee's questions, drew attention to a document prepared by his delegation entitled "Responses to issues raised during the examination of the thirteenth and fourteenth periodic reports of Mauritius" which had been circulated for the benefit of the Committee members.

5. Mauritius was a multiracial, multicultural, multireligious country, and the entire population had derived from immigration during the colonial era, under first French and then British rule. It had no indigenous population. Labour had initially been brought from Africa and later from India, with traders subsequently arriving from China. As a result, the society was a cultural mosaic. Much progress had been made since independence in fostering a sense of national unity and identity. However, the ideal of an egalitarian society with democratic values could not realistically be achieved overnight. The Government had endeavoured to put in place many mechanisms to ensure that no single group would dominate. There was of course no magic formula with which to foster mutual understanding and tolerance; each country must find its own methods. In comparison with other multi-ethnic, multireligious countries, Mauritius had been relatively successful in that respect. The fundamental rights and freedoms guaranteed under article 5 of the Convention - democracy, freedom of movement, the right to nationality, marriage, inheritance, freedom of thought and conscience, freedom of opinion and expression, freedom of peaceful assembly and equality of opportunity - were upheld in the country's Constitution.

6. The census token in July 2000 had been conducted on the basis not of ethnic or racial appurtenance, but of level of income and ancestral languages. Information from the census would be transmitted to the Committee as soon as it became available. Recruitment to the

administrative and judicial services was carried out on the sole basis of merit. The National Human Rights Commission had been established in 1998, but it was not currently operational owing to human resource constraints. Effect had been given to article 4 of the Convention through the enactment of the Public Security Act, which made its provisions a part of domestic law.

7. In its 1996 concluding observations (CERD/C/304/Add.19), the Committee had expressed concern that section 16 of the Constitution did not apply to private law, including laws governing marriage, adoption, divorce and succession, and further questions on that point had been raised at the current session. Section 16 prohibited discrimination, but provided an exemption for such matters out of deference for personal law and freedom of religion. That measure had been rooted in the 1965 Constitutional Conference, when Mauritius had begun negotiations for independence and the Muslim community had requested that such provisions should be included in the Constitution. For the time being, only the Muslim community had availed itself of the possibility of recourse to private law. The Government had established a committee composed of eminent jurists and specialists, including some from Saudi Arabia, to determine how best to integrate Muslim personal law within the legal system, and a first interim report had already been drafted. The existence of personal law in Mauritius was not in any way discriminatory, nor was it in conflict with the provisions of the Convention.

8. There had been some instances of tension between foreign workers and Mauritians, but all foreign workers enjoyed the equal protection of the law and had access to avenues of redress before the courts. The delegation had taken cognizance of the Committee's observations with respect to article 14 of the Convention, which, it noted, was not binding, and of the Committee's observations concerning the amendment to article 8. All legal and administrative steps had been taken to enable the inhabitants of the St. Brandon and Agalega islands to exercise their right to vote. A presidential education trust had been set up with the assistance of the Global Action Programme on Education for All of the United Nations Educational, Scientific and Cultural Organization (UNESCO), with the aim of breaking the cycle of poverty among the most vulnerable sectors of society. It had already begun activities in a number of regions, ensuring access to education from pre-school to the end of secondary level.

9. A commission of inquiry had investigated the causes of the riot which had shaken Mauritius in 1999 and had submitted its report to the President. It would be inappropriate for the delegation to comment on the causes of the riot before that report was published.

10. Education in Mauritius was provided free of charge at all levels and, together with health and social welfare, was considered one of the three fundamental pillars of society. Because there was only one university with just 5,000 places, entry was highly competitive. The Government was in the process of establishing a University of Technology to try to keep pace with technological progress and ensure that the country would not be left behind.

11. The reform of the judiciary had been intended to render procedures less cumbersome, to make the courts more accessible to all regardless of the means available to them, and to strengthen the independence of the judiciary.

12. The Convention could be directly enforced in the courts and article 4 had already been incorporated into domestic legislation; the Criminal Code also incorporated many of the provisions regarding discrimination. In general, unless the provisions of a Convention were specifically incorporated into municipal law, they did not have legal effect. However, the very fact that Mauritius was a signatory to a Convention inevitably influenced the courts in their interpretation of the law and they definitely took into account international instruments as well as international jurisprudence.

13. The Presidential think-tank was made up of well-respected community leaders and had a very positive influence in fostering harmony among the different groups in Mauritius. With regard to housing, he referred members to the information contained in annexes C and D to his presentation and pointed out that the most recent budget provided for the construction of housing units for low-income groups as well as incentives to assist low-income families to build their own houses. Those annexes also contained information on measures taken to address marginalization and poverty.

14. Complaints of racial discrimination could be made to the police, and complainants had recourse to the courts and to judicial review. There were currently no cases of racial discrimination before the courts. The only related case had been that of Pointu v. Minister of Education before the Supreme Court, with the judgement subsequently reviewed by the Judicial Committee of the Privy Council. It involved the Catholic schools and was more a case of equality of opportunity in the area of ancestral languages.

15. Mauritian law was based on the principle of the presumption of innocence, due process and the right to appeal and any law found to be in conflict with the Constitution could be declared null and void by the courts; legal aid was also available to those in need. There were no lay magistrates in Mauritius; all magistrates and judges were legally qualified officers, and police and all stakeholders in the justice system received training in human rights issues.

16. Although English was the official language of the country, French was widely spoken and, in an effort to promote cultural diversity, ancestral languages were also taught in the schools. School attendance was based on the catchment area, in other words children living near a school would attend that school.

17. He took note of the Committee's observations with regard to implementation of article 11 of the Convention but said that, regrettably, Mauritius did not currently have the resources necessary to implement that article.

18. Mr. ABOUL-NASR thanked the delegation for the clarifications it had provided concerning Muslim personal law and asked whether the delegation could provide some information on the languages spoken by the Muslim population of Mauritius.

19. Mr. SHAHI also welcomed the clarifications concerning Muslim personal law and said that the concerns that the Committee had expressed with regard to article 16 of the Constitution (CERD/C/362/Add.2, paras. 24-25) seemed to have been unfounded. He stressed that personal law included not only marriage but also divorce, adoption, inheritance and other like matters. He noted that Mauritius had adopted the British legal model where international human rights

instruments were taken into account when drafting and interpreting domestic law rather than incorporating those instruments into domestic legislation. It was important, however, that article 4 (a) had been incorporated into national law and he expressed the hope that paragraphs 4 (b) and (c) would also be incorporated into domestic legislation, since in a multiracial and multilingual society it was important for discriminatory acts to be prevented and full expression be given to that article.

20. Mr. BOSSUYT stressed that there were various models for the implementation of international human rights instruments and it was incumbent on each State party to choose the model which was most appropriate to its own history and culture and would foster full participation by all and harmonious and peaceful coexistence.

21. Mr. RECHETOV said how crucial it was for everything possible to be done to ensure that the new millennium would be free of conflict between societies and cultures. Different forms of civilization must cooperate in harmony, and respect for the rights of the different cultures within States must be enshrined in legal practice. The international community must also respect the various approaches to human rights which might be adopted by different societies.

22. Mr. FALL (Country Rapporteur) said that the openness and comprehensiveness of the responses provided by the delegation showed that Mauritius was well on the way to full implementation of the Convention and that much important progress had been made since the previous report. He noted the creation of the National Human Rights Commission, the Committee on Poverty, and the Equal Opportunities Act, and said that the Committee looked forward to receiving information on their work, as well as more statistical data, in the next report. He encouraged the State party to make the relevant declaration under article 14 of the Convention.

23. The CHAIRMAN pointed out that article 11 was also an important article of the Convention and the State party should make every effort to implement it.

24. Ms. DWARKA-CANABADY (Mauritius) thanked the Committee for its very helpful insights and, in response to Mr. Aboul-Nasr, said that the Muslim population in Mauritius spoke Urdu and Arabic, both of which were taught in school. With regard to a question from Mr. Bossuyt, she said that more women foreign workers were currently entering the country because the greatest need for workers was in the textile industry. With regard to medical care, both Mauritians and foreigners, including tourists, had free access to medical care and Mauritius wished to become known as a regional leader in health care.

25. Mr. BOOLELL (Mauritius) thanked the Committee for its comments and said he looked forward to a continued fruitful dialogue with the Committee.

26. The CHAIRMAN thanked the delegation of Mauritius for an exemplary dialogue with the Committee.

27. The delegation of Mauritius withdrew.

The meeting was suspended at 11.25 a.m. and resumed at 11.45 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Thematic discussion on the question of discrimination against Roma

28. Mr. DIACONU, speaking as convenor of the open-ended working group on Roma, and emphasizing the distinctiveness of the Roma minority, said that the working group had decided on the format of an open general debate for the three Committee meetings devoted to the thematic discussion. Four main topics of discussion emerged from the available documentation from outside sources: violence against Roma; the education of Roma and the education of the general public about Roma; the living conditions of Roma, including employment, housing and health; and their participation in public affairs. The working group believed that the outcome of the general debate should be a general recommendation of the Committee addressed to States parties, a document that could also be one of the Committee's contributions to the forthcoming World Conference against Racism.

29. As to participation of non-members of the Committee in what was essentially a general debate within the Committee, the working group believed that all members of the Sub-Commission on the Promotion and Protection of Human Rights should be invited to attend and three of them invited to speak, with a 15-minute time limit for each: its Chairperson, the Chairperson of its Working Group on Minorities and Mr. Sik Yuen, a member of that same Working Group, who had written a report on the Roma. The Chairperson of the Committee on Economic, Social and Cultural Rights, which would be meeting concurrently, should also be invited to attend and speak if he wished. Representatives of the regional human rights organizations should be invited to attend but not to speak: the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe, the Inter-American Commission on Human Rights (IACHR), the Organization of African Unity (OAU) and the Arab League. The working group did not think it advisable to invite any non-governmental organizations (NGOs) to speak during the proceedings, because 20 or 30 of them had already indicated an interest in attending. It suggested instead holding an informal meeting with interested NGOs, on a day prior to the thematic discussion, at which they could make statements orally and in writing, so that the Committee could take their ideas into account in making its recommendations.

30. Mr. ABOUL-NASR said he believed that the Roma themselves should be able to discuss their situation with the Committee, and proposed inviting a representative of some particularly prominent Roma organization to speak during the general debate. He also thought that a set of recommendations should be adopted at the conclusion of the thematic discussion - which was not intended to be a grand conference.

31. The CHAIRMAN observed that draft recommendations on the topic could be the immediate outcome, before the Committee elaborated a general recommendation on Roma.

32. Mr. RECHETOV, noting that organizations working on behalf of Roma were rarely headed by Roma, said that he agreed nonetheless with Mr. Aboul-Nasr that it would be incorrect not to have a Roma representative present. He further proposed inviting as a speaker the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism,

racial discrimination, xenophobia and related intolerance, who had recently produced a report on racial intolerance that dealt with Roma. There might, of course, be financial implications in inviting him if he was not present in Geneva.

33. Mr. de GOUTTES said that, since the topic was such an important one and it was the Committee's first debate the on the issue, the meetings should be made more open by inviting more speakers than those proposed. The representatives of the intergovernmental regional organizations should be allowed to give their positions on Roma, if they wished, and certainly a Roma representative, from one of the two or three major organizations, should speak. He supported Mr. Diaconou's proposal to hold a separate meeting where all other NGOs could be heard.

34. Mr. RECHETOV observed that another argument for a separate meeting with NGOs was the fact that representatives of Governments, who would also be present, would constantly demand rights of reply.

35. Mr. SHAHI said that Roma representatives should participate in the debate, but that inviting them would have financial implications.

36. He supported the drafting of a genera' recommendation addressed to States parties, even though not all of them had Roma populations, and later submitting the document to the World Conference. He suggested that the working group should prepare a preliminary text. He himself had compiled extracts from the Committee's concluding observations on periodic reports by Eastern European countries from 1995 to March 2000, and those, supplemented by studies made by other human rights bodies, would be a good basis for the draft.

37. The CHAIRMAN asked whether any Roma organizations had consultative status with the Economic and Social Council.

38. Mr. BOSSUYT, expressing support for Mr. Diaconu's proposals, said that the Committee should at all costs avoid a situation where its time was taken up by accusations levelled at Governments by NGOs, and the formers' replies, and therefore, neither NGOs nor Governments should be invited to speak. However, regional organizations could be invited. Endorsing the Chairman's words, he said that the Committee should be informed which relevant NGOs had consultative status with the Economic and Social Council.

39. With regard to the venue for the debate, whichever approach the Committee adopted the discussion would attract great attention. Any change in venue would lead to a change in atmosphere and in the Committee's working methods. It was important to bear in mind, however, that the Committee's meetings were public and, in that sense, it was difficult to tell individual parties that they could not attend.

40. Mr. ABOUL-NASR said that the Committee should be modest in its aims since it had only three meetings available for the discussion. Those meetings should serve as a preliminary exchange of views helping to bring attention to the issues raised and to make suggestions and decisions about future action, including, possibly, the convening of a conference.

41. The CHAIRMAN stressed the importance of an outcome to the debate. The preliminary discussions conducted could perhaps prepare the ground for a special Committee session devoted to the issue of discrimination against Roma. A draft recommendation or decision could also be produced. The working group could subsequently continue its work.

42. Mr. SHAHI agreed that the Committee should lower its expectations. In order to focus the debate on the Committee's own views and findings, it could use its own concluding observations, which had been produced following discussions with States parties, to facilitate the drafting of a general recommendation.

43. Secondly, with reference to the possibility of inviting regional human rights bodies, it was clear that OSCE and the Council of Europe could be invited since many European countries had Roma populations, but it remained to be seen whether African, Latin American and Arab regional organizations had a direct interest in the issue.

44. The CHAIRMAN observed that an invitation could be sent to all regional organizations, leaving those covering regions which did not have Roma populations free to decline.

45. Mr. DIACONU said that what the Committee wished to achieve from the debate was a general recommendation to States parties. Which of those State parties were directly concerned remained to be ascertained. According to a recent conference in Paris, 35 countries had Roma populations, but there might well be others with Roma communities as a result of recent immigration.

46. He agreed that the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance should be invited to the meeting if he were in Geneva at the time, since he had produced many reports on the Roma. The Chairperson of the Sub-Commission Working Group on Minorities should also be invited, given that he was a specialist on the issues relating to those populations.

47. By contrast, statements by regional intergovernmental organizations would add nothing new to the debate, since they would most likely take the opportunity simply to list their activities, for which reports were already available, and make related proposals. With regard to the representation of Roma, although many national and regional organizations existed no one international body covered the interests of that population, or of that population alone to the exclusion of other minority groups. Inviting one NGO would, indeed legitimately, attract applications from others. It was, moreover, difficult not to invite all States parties. In order to avoid a situation in which the Committee remained a mere spectator at such a meeting, a separate informal meeting with NGOs, possibly two hours in length, should be held prior to the Committee's main debate as part of the necessary preparations for the forthcoming thematic discussion.

48. The CHAIRMAN, summing up, said that it emerged that the Committee wished to draft a general recommendation, with the assistance of the working group and the Secretariat, which he had approached on the subject. Similarly, it had been agreed that the members of the Sub-Commission on the Promotion and Protection of Human Rights should be invited to the meeting and that three of them, together with the Special Rapporteur and the Chairperson

of the Committee on Economic, Social and Cultural Rights, should be invited to speak. In that connection, it was important to establish a time limit for their interventions, such as 10 to 15 minutes. With regard to the representation of Roma, the Secretariat would provide the information requested as to whether there was any umbrella organization representing the Roma and whether it had consultative status with the Economic and Social Council. If not, the working group would decide on the best course of action. Lastly, Mr. Diaconu's suggestion to hold a prior informal meeting appeared to have encountered no opposition.

49. Mr. RECHETOV said that the role of Central and Eastern Europe was very important. For information, during the recent experts' seminar held in Warsaw the representative of a Budapest-based NGO had represented the interests of Roma.

50. The CHAIRMAN, speaking in his personal capacity, said that all regional organizations should be invited and should have the right to speak at the meeting, in accordance of course with a pre-established time-frame. All invitations should be issued immediately.

51. Mr. BOSSUYT said that the invitations should include the phrase: "you are invited if you so wish".

52. Mr. ABOUL-NASR agreed, the alternative being simply to inform them about the meeting, specifying that it was an informal one which they could attend if they so wished.

53. In response to a question by the CHAIRMAN about giving the floor to States parties, Mr. DIACONU said that therein lay the difficulty, since one State party could not be given the floor without affording that right to others. The same applied to NGOs. The Committee's work should be kept within bounds.

54. Mr. ABOUL-NASR said that NGOs were not comparable to States parties in terms of dialogue with the Committee. The latter should not be denied the right to speak on matters concerning them. Their requests to speak should be considered individually as they arose.

55. Mr. BOSSUYT, expressed support for Mr. Diaconu's position, that it should be decided from the outset that neither States parties nor NGOs should be given the floor so as to avoid an interminable and inconclusive debate. It would be difficult to give Governments the opportunity to speak and yet deny that possibility to NGOs in what was a thematic discussion, not consideration of an individual country report..

56. Mr. RECHETOV expressed support for the comments made by Mr. Bossuyt. Such a decision would indeed be in the interests of Governments.

57. In response to a request for clarification by the CHAIRMAN about the participation of organizations representing Roma and States parties, Mr. DIACONU reiterated the working group's position that an informal meeting could be held with NGOs prior to the Committee's official thematic discussion. He did not see the need to invite States parties, since there was already provision for hearing their views within the context of consideration of their periodic reports.

58. Mr. ABOUL-NASR pointed out that the Committee was not authorized to produce concluding observations or reports referring to individual States parties without giving them a chance to respond.

59. The CHAIRMAN said that he would send a letter on behalf of the Committee inviting the agreed persons to participate in the discussion. With regard to States parties and NGOs, the working group should be invited to reconvene rapidly and report back to the Committee.

60. It was so agreed.

The meeting rose at 1 p.m.